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EXAMINER

LOWE, MICHAEL S

| ART UNIT | PAPER NUMBER |
|----------|--------------|
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3652

DATE MAILED: 01/12/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/729,896

Applicant(s)

HURLBURT, JOSEPH C.

Examiner

M. Scott Lowe

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 21 December 2005.
- 2a) ☒ This action is FINAL. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-46 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-46 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 08 December 2003 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____.
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date: _____.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: _____.

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 14-17 are rejected under 35 U.S.C. 102(b) as being anticipated by Gay (US 3,937,502).

Re claim 14, Gay teaches an actuating mechanism for use with a frame (19 or 83) and a load bed 27 pivotally movable about a pivot axis (not numbered) relative to said frame comprising:

a mounting bracket (not numbered) affixed to said frame;
a linear actuator (60 or 87) pivotally supported on said mounting bracket for pivot movement about a generally horizontal actuator pivot axis (not numbered); and
a yoke (various, see figure 3) connected to said actuator (60 or 87) and pivotally connected to said load bed 27 by a pivot mechanism (various, see figure 3) defining a yoke pivot axis (not numbered) to effect vertical movement of said load bed 27 in response to a corresponding linear movement of said actuator (60 or 87).

Re claim 15, Gay teaches said actuator pivot axis positioned in general transverse alignment with said yoke pivot axis so that said actuator (60 or 87) is pivotally movable between an upright operable position and a lowered inoperative position.

Re claim 16, Gay teaches said actuator (60 or 87) pivotally connected to said mounting bracket by a pivot pin (not numbered) located at a position vertically spaced from said actuator pivot axis.

Re claim 17, Gay teaches said actuator pivotally connected to said mounting bracket by a pivot pin, said pivot pin defining said actuator pivot axis.

Claims 1-17, 20-27,30-46 are rejected under 35 U.S.C. 102(b) as being anticipated by Pietroroia (US 3,058,779).

Re claims 1,4,5,14,25,37, Pietroroia teaches an actuating mechanism for use with a frame (11 or 12) and a load bed 13 pivotally movable about a pivot axis (not numbered) relative to said frame comprising:
a mounting bracket (not numbered) affixed to said frame;
a linear actuator 22 pivotally supported on said mounting bracket for pivot movement about a generally horizontal actuator pivot axis (not numbered); and
a yoke (various, see figures) connected to said actuator 22 and pivotally connected to said load bed 13 by a pivot mechanism (various, see figures) defining a yoke pivot axis (not numbered) to effect vertical movement of said load bed 13 in response to a corresponding linear movement of said actuator 22.

Re claims 6,10,11,15,38-42, Pietroroia teaches said actuator pivot axis positioned in general transverse alignment with said yoke pivot axis so that said actuator 22 is pivotally movable between an upright operable position and a lowered inoperative position.

Re claims 7,16, Pietroroia teaches said actuator 22 pivotally connected to said mounting bracket by a pivot pin (not numbered) located at a position vertically spaced from said actuator pivot axis.

Re claims 8,17, Pietroroia teaches said actuator pivotally connected to said mounting bracket by a pivot pin (not numbered), said pivot pin defining said actuator pivot axis.

Re claims 2,3,9,20,34-36, Pietroroia teaches said frame (11 or 12) corresponds to a trailer 10 having a draft tongue 11 pivotally connected to said frame for movement about an articulation axis (25 or 23), said load bed 13 being pivotally connected to said frame at a dump pivot axis 21 located rearwardly of said articulation axis (25 or 23), said actuator causing an articulation between said draft tongue 11 and said frame (11 or 12) thereby effecting a pivotal movement of said load bed about a tilt pivot axis 17 located between said articulation axis (25 or 23) and said dump pivot axis 21.

Re claims 21,27, Pietroroia teaches a latch mechanism (23,25,etc.).

Re claims 12,13,22,23,24,30-33, Pietroroia teaches a hydraulic actuator 22 with a hand pump 27 and remote internal reservoir (inherent).

Re claim 26, Pietroroia teaches first and second stops (not numbered, see figures).

Re claim 43, Pietroroia teaches a trailer 10 comprising:

a main frame having at least a pair of transversely opposed wheels 18 rotatable about an axis of rotation, said main frame including a tilt frame 12 pivotable about a tilt

pivot axis 17 and a draft tongue 11 being adapted for connection to a prime mover (inherent), said tilt frame 12 being pivotally movable relative to said draft tongue 11;

a bed frame 13 including a forwardmost transverse frame member (not numbered), said bed frame 13 being supported on said main frame 11 for selective pivotal movement relative to said tilt frame 12 about a dump pivot axis 21 oriented rearwardly of said tilt pivot axis 17, said bed frame 13 further being selectively movable with said tilt frame 12 relative to said draft tongue 11 about said tilt pivot axis 17;

a locking mechanism (22 or 30-32, etc.) cooperatively associated with said bed frame 13, said tilt frame 12 and said draft tongue 11 for selectively permitting said bed frame 13 to pivot receptively relative to said dump pivot axis 21 and relative to said tilt pivot axis 17; and

an actuator 22 interconnecting said draft tongue 11 and said bed frame 13 forwardly of said forwardmost transverse frame member (see figures) to effect pivotal movement of said bed frame.

Re claim 44, Pietroroia teaches said locking mechanism (22 or 30-32, etc.) positioned forwardly of said tilt pivot axis and includes a first member interconnecting said bed frame 13 and said tilt frame 12 to restrict pivotal movement therebetween and a second member interconnecting said tilt frame and said draft tongue to control relative pivotal movement between said tilt frame and said draft tongue.

Re claim 45, Pietroroia teaches said bed frame 13 moves vertically with said tilt frame 12 relative to said draft tongue 11 when pivoting about said tilt axis 12 and

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vertically relative to said tilt frame 12 and said draft tongue 11 when pivoting about said dump axis.

Re claim 46, Pietroroia teaches said actuator mechanism 22 is pivotally mounted on said draft tongue 11 and movable between a reclined inoperative transport position generally parallel to said draft tongue and an upright operative position to power the pivotal movement of said bed frame (see figures).

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 18-19 are rejected under 35 U.S.C. 103(a) as being unpatentable over Gay (US 3,937,502) in view of Chapman (WO/83/00033).

Re claim 18, Gay does not teach the actuator being a manual screw jack. Chapman teaches a manual screw jack actuator for changing framework angles and elevation. It would have been obvious to one of ordinary skill in the art at the time the invention was made to have modified Gay by the general teaching of Chapman to use a manual screw jack type actuator as an equivalent alternative in situations where manual power is preferred.

Re claim 19, Gay as already modified by Chapman teaches the actuator comprising an outer casing, a telescopic section extensible from said outer casing upon

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manipulation of said crank handle, and a bottom tip member slidably extensible from said telescopic section and detachably to said telescopic section by a locking device (not numbered) such that a release of said locking device permits said telescopic section to freely slide on said bottom tip member to enable said load bed 27 to move vertically through application of forces other than through said actuator.

Claims 18-19,28,29 are rejected under 35 U.S.C. 103(a) as being unpatentable over Pietroroia (US 3,058,779) in view of Chapman (WO/83/00033).

Re claims 18,28, Pietroroia does not teach the actuator being a manual screw jack. Chapman teaches a manual screw jack actuator for changing framework angles and elevation. It would have been obvious to one of ordinary skill in the art at the time the invention was made to have modified Pietroroia by the general teaching of Chapman to use a manual screw jack type actuator as an equivalent alternative in situations where manual power is preferred.

Re claims 19,29, Pietroroia as already modified by Chapman teaches the actuator comprising an outer casing, a telescopic section extensible from said outer casing upon manipulation of said crank handle, and a bottom tip member slidably extensible from said telescopic section and detachably to said telescopic section by a locking device (not numbered) such that a release of said locking device permits said telescopic section to freely slide on said bottom tip member to enable said load bed 13 to move vertically through application of forces other than through said actuator.

Conclusion

Applicant's arguments filed 12/21/05 have been fully considered but they are not persuasive.

Applicant argued that the references did not teach a yoke. However, this is not the case. The definition of yoke is "something that connects or joins together; a bond or tie" (see the free online dictionary, <http://www.thefreedictionary.com/yoke>). Certainly this applies to many items on any of the references, particularly as pointed out in the above rejections. It is unclear if applicant trying to claim some special structure to his use of "yoke". Applicant should point out clearly with the actual claim limitations what is being claimed. Furthermore, since "yoke" is a well-known term in the art, applicant should not redefine the term in any arguments to mean something different than its standard definition.

Applicant argued that Pietroroia does not teach three axes. This is not persuasive. First, the actual claim language does not require there be three distinctly separate axes. Secondly, there are at least three axes (generally as shown in figure 8 at item numbers 17,21,25).

Applicant argued that Pietroroia does not teach an actuator positioned forwardly of the load bed. This is also unpersuasive. Pietroroia has an actuator 22 positioned forwardly of load bed 13 in figures 8 and 9, which meets the actual written limitations of the claims.

In response to applicant's argument that the references fail to show certain features of applicant's invention, it is noted that the features upon which applicant relies

(i.e., yoke structure, when or how the actuator is located ahead of the load bed) are not recited in the rejected claim(s). Although the claims are interpreted in light of the specification, limitations from the specification are not read into the claims. See *In re Van Geuns*, 988 F.2d 1181, 26 USPQ2d 1057 (Fed. Cir. 1993).

THIS ACTION IS MADE FINAL. Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to M. Scott Lowe whose telephone number is (571) 272-6929. The examiner can normally be reached on 6:30am-4:30pm M-Th.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Eileen Lillis can be reached on (571) 272-6928. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

msl



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